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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,343	02/23/2004	Greg Volgas	00306-00355-US	2346

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT PAPER NUMBER

1616

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/784,343

Applicant(s)

VOLGAS ET AL.

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1 and 91-104 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1 and 91-104 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 100 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 100 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: What is object is the herbicide applied to.

Applicant's arguments filed 3/27/06 have been fully considered but they are not persuasive. See arguments below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 91-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over AF 300 from Nufarm MSDS, Infosafe No. NU003. AF 300 MSDS teaches a composition comprising 300 g/l 2,4-dichlorophenoxy acetic acid, 50% ethoxylated alcohol, plus solvent 400 (kerosene). AF 300 MSDS teaches that the composition

Art Unit: 1616

emulsifies in water. It is well known that herbicides are applied plants. See MSDS. AF 300 MSDS does not teach or suggest the a) formulation of microemulsion upon combining composition with water and b) instant amounts of ingredients. From the teaching of the MSDS that the composition emulsifies when combined with water makes obvious the formation of microemulsion. With respect to the amounts of ingredients, it would have been obvious to one having ordinary skill in the art to determine the optimum amount of ingredients. One would have been motivated to do this in order to develop the most effective herbicide composition.

Applicant's arguments filed have been fully considered but they are not persuasive. See arguments below.

Applicant argues:

- a) Declaration of Johnnie Roberts executed 2/1/06 provides unexpected results for instant composition comprising 85% of C11 alcohol with 3-moles of ethylene oxide and 15% 2,4-D acid. Roberts' experiment yield complete solubility of 2,4-D acid under conditions wherein the composition was stirred for 30 minutes at ambient temperature. On the other hand, AF-300 discloses a composition containing kerosene and 2,4-D acid wherein after 66 hours of stirring at ambient temperature the 2,4-D acid is not fully dissolved.
- b) Declaration of Johnnie Roberts executed 2/1/06, which establishes that AF 300 herbicide does not fully dissolve said chlorinated carboxylic acid herbicide (2,4-D) in the surfactant as required by the applicant's claim.

Art Unit: 1616

Roberts' declaration argues that 70 degree C would not be used in herbicide applications.

- c) 2,4-D is not fully solubolized in kerosene; whereas, full solubolization of the herbicide is a primary characteristic of the applicant's invention.
- d) Applicant provides IUPAC definition of solubility and ASTM definition of a liquid.

Examiner argues:

- a) Instant claims are not commensurate in scope with data provided in Johnny Roberts' declaration of 2/1/06. The claims do not specify a temperature requirement as recited in the example recited in the declaration. Also, claims disclose the broad terms "surfactant" and "chlorinated carboxylic acid herbicide in the acid form," whereas, the example in Roberts' declaration is specific to 85% of C11 alcohol with 3-moles of ethylene oxide as the surfactant and 15% 2,4-D acid as chlorinated carboxylic acid herbicide.
- b) Johnny Roberts declaration signed 7/22/05 discloses that stirring 2,4-D in kerosene at 70 degree C results in 2,4-D being fully solubolized. Note that the claims do not specify a temperature limitation for dissolving 2,4-D in a solvent. Therefore, any temperature at which 2,4-D dissolves in kerosene reads on the claims. Although 70 degree C temperature may not be employed in herbicide applications, the purpose of the 70 degree C temperature employed by the applicant was not to employ the 2,4-D acid

Art Unit: 1616

in a herbicide application but instead to fully dissolve the 2,4-D acid in kerosene.

- c) 2,4-D is fully solublized in kerosene. See Examiner's section b).
- d) Solubility and liquid definitions require experimental results to be acquired at specific temperatures. Note that claims do not recite a required temperature.

### ***Double Patenting***

Examiner acknowledges Applicants' willingness to file a terminal disclaimer over 09/916,611 at a later date. Until then, the double patenting rejection on record is maintained.

### ***Interference***

Examiner acknowledges Applicants' interest in setting up an interference with respect to USPN 6803345. Interference can be setup once all rejections are overcome.

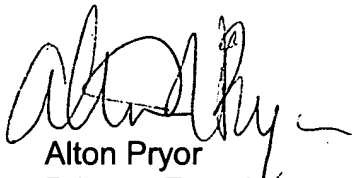
### ***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alton Pryor', with a stylized flourish at the end.

Alton Pryor  
Primary Examiner  
AU 1616